

ATTORNEY GENERAL REGULATION OF CHARITIES AND THEIR FUNDRAISERS



The Regulatory Scheme

- ✱ Primary responsibility for oversight of charitable trusts and solicitations
- ✱ Historical roots
- ✱ Sources of authority
 - ✱ Common law
 - ✱ Nonprofit Corporation Law (Corp. Code sec. 5000)
 - ✱ Trust law
 - ✱ Supervision Act

The Supervision Act

- ✱ Trustees and Fundraisers for Charitable Purposes Act (Gov. Code sec. 12580 et seq.)
- ✱ Components
 - ✱ Registration
 - ✱ Reporting
 - ✱ Oversight
 - ✱ Enforcement

The Supervision Act

★ Applies to

- ★ Charitable corporations
- ★ Unincorporated associations
- ★ Trustees for charitable purposes
- ★ Fundraising professionals for charitable purposes
 - Commercial fundraisers
 - Fundraising counsel
 - Commercial co-venturers

The Supervision Act

- ★ Exemptions to registration and reporting
 - ★ Hospitals and health care service plans
 - ★ Educational institutions
 - ★ Religious corporations

Recent Amendments to The Supervision Act

- ✱ Effective January 2005
- ✱ Initial Registration
 - ✱ Clarifies initial registration date
 - Within 30 days of receiving property
 - Property includes money and any other type of real or personal property
 - See *Initial Registration Checklist at www.ag.ca.gov/charities*

GC sec. 12585

Recent Amendments:

Audited Financial Statements

★ Applies to the following entities with \$2 million or more in gross revenue*

- ★ Nonprofit Corporations
- ★ Unincorporated Associations
- ★ Trusts

[Unless exempt from registration and reporting]

* \$2 million threshold exclusive of revenue from governmental grants and contracts for services for which an accounting is required

Recent Amendments:

Audited Financial Statements

- ★ Definition of gross revenue: as reported on Line 12 of IRS Form 990 and Line 12(a) of 990PF
- ★ Non-audit services: adhere to Yellow Book standards for auditor independence
- ★ Available to Attorney General and members of the public 9 months after close of fiscal year

GC sec. 12586(e)(1)

Recent Amendments: Audit Committee

- ★ Appointed by Governing Board
 - ★ Can be non-Governing Board members
 - ★ Cannot be:
 - ★ Staff Members (employees of the charity)
 - ★ President or CEO
 - ★ Treasurer or CFO
 - ★ Comprised of 50% or more from Finance Committee

Recent Amendments: Audit Committee

- ★ Audit Committee duties:
 - ★ Recommend hiring and firing of CPA to the Governing Board
 - ★ Confirm that financial affairs in order
 - ★ Review and accept/reject audit
 - ★ Approve non-audit services by CPA

GC sec. 12586(e)(2)

Recent Amendments:

Executive Compensation Review

- ✱ Executive compensation* must be reviewed and approved by the governing board or authorized board committee
- ✱ Applies to all:
 - ✱ Nonprofit corporations
 - ✱ Unincorporated associations
 - ✱ Trusts

GC 12586(g)

*Including benefits

Recent Amendments: Executive Compensation Review

- ★ Review and approval required for the following positions:
 - ★ President or CEO
 - ★ Treasurer or CFO
 - ★ Or others with comparable powers and duties

Recent Amendments: Executive Compensation Review

- ★ Applies when:

- ★ Initial hiring of officer
- ★ Renewing or extending employment term
- ★ Modifying compensation

- ★ Standard:

- ★ “Just and reasonable” compensation

Recent Amendments: Commercial Fundraisers

- ★ Notice of Intent to Solicit
 - ★ To the Attorney General
 - ★ 10 working days before the start of a solicitation campaign or event
 - ★ Exception for Disaster Solicitations*

GC sec. 12599(h)

*Notice concurrent with commencement of campaign

Recent Amendments: Commercial Fundraisers

- ★ Requirement of written contracts
 - ✱ For every solicitation campaign or event
 - ✱ Voidable unless the commercial fundraiser is registered with the Attorney General
 - ✱ Must be signed by an official authorized by the Charity's Governing Board

Recent Amendments: Commercial Fundraisers

- ✱ Required content:
 - ✱ Charitable purpose
 - ✱ Obligations of both parties
 - ✱ Clear statement of fee arrangement
 - ✱ Effective, start, and termination dates
 - ✱ 5-day deposit of contributions

GC sec. 12599(i)

Recent Amendments: Commercial Fundraisers

- ✴ Required content (cont.):
 - ✴ Charity's control of content and frequency of solicitation
 - ✴ Maximum amount to secure a person's attendance, approval, sponsorship or endorsement of an event
 - ✴ Cancellation rights



Recent Amendments: Fundraising Counsel

- ✱ Notice of Intent to Solicit
- ✱ Requirements for written contracts

Recent Amendments:

All Fundraising Professionals

- ✱ All contracts must include specific cancellation provisions
 - ✱ Voidable if CFR or FRC not registered
 - ✱ Right to cancel for any reason w/in 10 days of execution
 - ✱ Right to cancel at any time during life of contract

GC sec. 12599.3

Recent Amendments

- ✱ Specific Obligations When Fundraising
 - ✱ No misrepresentations of purpose of charity or beneficiary
 - ✱ Charity must exercise control over fundraising activities

Recent Amendments: Solicitation Content

- Use of 'sound-alike' name or symbol
- Misreps involving name of charity or charitable purpose
- Written authorization for endorsements
- Issuing items that can be used for display on a motor vehicle that suggests an affiliation with a group of public safety personnel

Recent Amendments:

Solicitation Content (cont.)

- ✱ Use of charity's name in solicitation w/o prior approval
- ✱ Misreps in the use of event tickets as fundraising tool

GC code sec. 12599.6

RAFFLE REGULATION

- ✱ A raffle is defined as a lottery
- ✱ Penal Code sec. 320.5
 - ✱ Creates an exception to California law prohibiting gambling
 - ✱ Registration and financial reports to AGO

The Attorney General's Charitable Trusts Section

★ Registry of Charitable Trusts

- ★ Program staff
- ★ Automation

★ Legal and Audit Unit

- ★ 10 attorneys
- ★ 10 auditors

Role of the CTS

- ✴ As defined in the Supervision Act
 - ✴ To detect and correct fiscal abuse
 - ✴ In order to assure charitable assets used for intended purposes
- ✴ Focus
 - ✴ Conduct that leads to diversion of assets
 - Excess compensation
 - Board misconduct
 - Fundraising abuses

Role of the CTS

✴ Approach to Regulation

- ✴ Effectiveness = compliance + enforcement
- ✴ Compliance: An educated nonprofit sector
- ✴ Educational outreach
 - Enhanced web resources
 - Availability of e-filing
- ✴ Enforcement:
 - Range of options
 - Targeted enforcement

Emerging Trends

- ✱ Increased interest in transparency and accountability
- ✱ Imposition of SOX provisions
- ✱ Focus on justification for tax exempt status
- ✱ Increased emphasis on the board and governance issues

Recent State Legislation

- ✱ SOX
- ✱ Self-dealing and conflict of interest
- ✱ Allegations of excessive compensation
- ✱ Increased disclosure
- ✱ Community benefits
- ✱ Real estate tax issues

Resource: www.ncna.org

Recent Developments

★ CA:

- new initial registration form
- participation in IRS e-filing initiative

★ National:

- Amendment of IRC 6104
- Independent Sector's Panel on the Nonprofit Sector
- Sen. Charles Grassley priorities
 - Regulation of charities
 - Increased resources for IRS and SCOs via private foundation excise tax
 - Nonprofit hospitals



ATTORNEY GENERAL CONTACTS AND INFORMATION

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Additional Resources

- ★ www.irs.gov
- ★ www.independentsector.org
- ★ www.boardsource.org
- ★ www.compasspoint.org